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EXAMINER

GILLIGAN, CHRISTOPHER L

ART UNIT	PAPER NUMBER
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3626

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09/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/992,036

Applicant(s)

DAHLIN ET AL.

Examiner

Luke Gilligan

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-11, 16-20, 25-31 and 39-51 is/are pending in the application.
- 4a) Of the above claim(s) 45-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11, 16-20, 25-31, 39-44 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/13/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Applicant's election with traverse of claims 9-11, 16-20, 25-31, 39-44, and 51 in the reply filed on 6/5/07 is acknowledged. The traversal is on the ground(s) that examination of all of the claims does not create an undue burden. This is not found persuasive because, as noted in the restriction requirement mailed 5/18/07, the claims of the two identified groups have attained a separate status in the art in view of their different classification. Therefore, there would be a serious burden on the examiner if restriction were not required. The requirement is still deemed proper and is therefore made FINAL.

Response to Amendment

2. In the amendment filed 2/16/07, the following has occurred: claims 32-38 have been canceled, claims 45-51 have been added, and claims 9 and 18 have been amended. Now, claims 9-11, 16-20, 25-31, 39-44, and 51 are presented for examination and claims 45-50 are withdrawn from consideration.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 9-11, 16-20, 25-32, 34-38, 40-42, 44, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Lewis et al., U.S. Patent Application Publication No. 2001/0041992 (it

Art Unit: 3626

should be noted that the Examiner is relying on the priority date from parent application 09/523,569; based on review of the parent application it is believed that the portions of the child application cited below are fully supported by the parent application).

5. As per claim 9, Lewis teaches a method for documenting medical findings of a physical examination, the method comprising: displaying a first interface including a first graphical representation of anatomical features (see paragraph 0059); accepting from a user a first selection of an anatomical feature based on the first graphical representation of anatomical features (see paragraph 0059); displaying a second interface including a second graphical representation of anatomical features and a first set of controls relating to a first plurality of medical conditions in response to accepting the first selection (see paragraph 0061), the second graphical representation of anatomical features and the first set of controls displayed simultaneously without obstructing each other (see paragraph 0110 and Figure 4H, note that the controls relating to medical conditions such as 'SHOULDER SPRAIN', 'ROTATOR CUFF TEAR', etc. are simultaneously displayed but do not obstruct the graphical representation of anatomical features); accepting from the user a second selection from the second graphical representation of anatomical features (see paragraph 0065); and displaying a third interface including a second set of controls relating to a second plurality of medical conditions (see paragraph 0065).

6. As per claim 10, Lewis teaches the method of claim 9 as described above. Lewis further teaches the first graphical representation of anatomical features includes a graphical representation of a plurality of body locations (see paragraph 0059).

7. As per claim 11, Lewis teaches the method of claim 10 as described above. Lewis further teaches the first selection comprises a response indicative of one of the plurality of body locations (see paragraph 0059).

Art Unit: 3626

8. As per claim 16, Lewis teaches the method of claim 9 as described above. Lewis further teaches the step of displaying the first interface and the step of displaying the second interface take place in different views (see Figures 4A and 4A).

9. As per claim 17, Lewis teaches the method of claim 9 as described above. Lewis further teaches displaying the second interfaced comprises displaying the second graphical representation in response to the first selection by the user, the first selection indicating a portion of anatomical features associated with the first graphical representation to be displayed, the second graphical representation including the portion of the anatomical features with greater detail (see paragraph 0061).

10. Claims 18-20 and 25-26 recite substantially similar apparatus limitations to method claims 9-11 and 16-17 and, as such, are rejected for similar reasons as given above.

11. As per claim 27, Lewis teaches the method of claim 9 as described above. Lewis further teaches the second interface includes a drill down button (see paragraph 0007).

12. As per claim 28, Lewis teaches the method of claim 9 as described above. Lewis further teaches the second interface includes a change system button (see paragraph 0064).

13. As per claim 29, Lewis teaches the method of claim 28 as described above. Lewis further teaches displaying a list of systems associated with the first selection in response to a user selection of the change system button (see paragraph 0064).

14. As per claim 30, Lewis teaches the method of claim 9 as described above. Lewis further teaches the second interface includes a procedure button (see paragraph 0063).

15. As per claim 31, Lewis teaches the method of claim 30 as described above. Lewis further teaches displaying a list of procedures associated with the first selection in response to a user selection of the procedure button (see paragraph 0111).

Art Unit: 3626

16. As per claim 32, Lewis teaches a system comprising a medical content database including a parent place node and a child place node, the parent place node associated with a first region of an anatomy, the parent place node including a graphical depiction associated with the first region and an indication of a particular location of the graphical depiction associated with the child place node (see paragraphs 0059-0061), the child place node associated with a second region of the anatomy enclosed by the first region of the anatomy (see paragraph 0061); and a medical finding engine, the medical content database accessible to the medical finding engine, the medical finding engine to initiate display of the graphical depiction in an interface associated with the first region and to initiate display of medical information associated with the child place node in response to receiving a selection associated with the particular location of the graphical depiction associated with the child place node (see paragraph 0065).

17. As per claim 34, Lewis teaches the system of claim 33 as described above. Lewis further teaches the medical information associated with the child place node includes the second graphical depiction (see Figures 4A-4J).

18. As per claim 35, Lewis teaches the system of claim 33 as described above. Lewis further teaches the child place node includes an indication of a second particular location of the second graphical depiction associated with a second child place node (see Figures 4A-4J).

19. As per claim 36, Lewis teaches the system of claim 32 as described above. Lewis further teaches the child place node includes a list of problems that may be assigned to findings associated with the second region (see Figures 4A-4J).

20. As per claim 37, Lewis teaches the system of claim 32 as described above. Lewis further teaches the child place node includes a list of procedures associated with the second region (see Figures 4A-4J).

Art Unit: 3626

21. As per claim 38, Lewis teaches the system of claim 32 as described above. Lewis further teaches the medical findings engine is to determine a medical finding in response to receiving the selection and to receiving a second selection associated with the medical information (see Figures 4A-4J).
22. As per claim 40, Lewis teaches the method of claim 9 as described above. Lewis further teaches the first set of controls includes an annotation control (see Figures 4A-4J).
23. As per claim 41 Lewis teaches the method of claim 9 as described above. Lewis further teaches the second plurality of medical conditions represents a greater level of detail than the first plurality of medical conditions (see paragraph 0065).
24. As per claim 42 Lewis teaches the method of claim 9 as described above. Lewis further teaches the second and third interface include a list of recent findings (see Figures 4A-4J).
25. As per claim 44, Lewis teaches the method of claim 9 as described above. Lewis further teaches accepting from the user a third selection, the third selection including changing one control of the first set of controls (see paragraph 0048); and combining the first selection and the third selection to derive at least one medical finding (see paragraph 0048).
26. As per claim 51, Lewis teaches the method of claim 9 as described above. Lewis further teaches the second graphical representation of anatomical features and the first set of controls are simultaneously active (see paragraph 0110 and Figure 4H).

Claim Rejections - 35 USC § 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3626

28. Claims 39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al., U.S. Patent Application Publication No. 2001/0041992.

29. As per claim 39, Lewis teaches the method of claim 9 as described above. Lewis does not explicitly teach the first set of controls includes a tri-state control configured to indicate present, not-present, or not entered. However this difference is only found in the non-functional data describing a control. The data identifying the control does not functionally relate to the substrate of the method. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *Cf. In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to label the controls in Lewis in any desired manner since merely labeling the data differently from that in the prior art would have been obvious matter of design choice. See *In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

30. As per claim 43, Lewis teaches the method of claim 9 as described above. Lewis further teaches displaying the first, second, and third interface are performed on a palm-top computer configured for use by a physician (see paragraph 0033). Lewis does not explicitly teach the use of a wireless tablet computer. However, the Examiner takes Official Notice that wireless tablet computers are old and well known in the art (see, for example, Schwartz, U.S. Patent No. 6,215,901, column 4, lines 7-21). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a wireless tablet computer into the system of Lewis. One of ordinary skill in the art would have been motivated to incorporate such a device for the purpose of providing a wider array of choices for user interfaces.

Response to Arguments

31. In the remarks filed 2/16/07, Applicants argue in substance that (1) Lewis fails to teach or suggest simultaneously displaying a graphical representation of anatomical features and a set of controls relating to the plurality of medical conditions in a single interface; (2) Lewis fails to teach displaying a second interface including a graphical representation of anatomical features and a set of controls associated with medical conditions in response to a first selection of an anatomical feature; (3) Lewis fails to teach simultaneous display of anatomical features and controls without obstructing one another; (4) Lewis fails to teach certain features of dependent claims; (5) the tri-state control is not merely non-functional data; (6) the Official Notice is traversed.

32. In response to Applicants' argument (1), numerous figures, such as 4D-4F, in Lewis show examples of a graphical interface which simultaneously displays a graphical representation of anatomical features (402, 423, 484) and a set of controls (401, 412, 430, 432, 444, 450, 488, 490, 492, 494) relating to the plurality of medical conditions. Therefore, the Examiner respectfully disagrees with Applicants' interpretation of the teachings of Lewis.

33. In response to Applicants' argument (2), Lewis clearly teaches a method of drilling down to a particular anatomic structure of interest through selections from an anatomic display (see paragraph 0059). Furthermore, as described above, the anatomic features and set of controls are displayed in a single display (see Figures 4D-4F).

34. In response to Applicants' argument (3), although certain examples of the display in Lewis appear to show views in which the anatomical features are obstructed by the controls, some examples of the display clearly show an unobstructed, single display of anatomic features and controls relating to the plurality of medical conditions (see Figure 4H). Therefore, the

Art Unit: 3626

Examiner respectfully disagrees with Applicants' interpretation of the teachings of Lewis with respect to this limitation.

35. In response to Applicants' argument (4), the Examiner respectfully disagrees with Applicants' assertions and directs Applicants' attention to the cited portions of the reference in the rejections above.

36. In response to Applicants' argument (5), although the Examiner appreciates the various useful functions and steps related to using a tri-state control, described at pages 11 and 12 of the response, none of these functions, uses, or steps are actually *claimed*. All that is claimed is the mere labeling of a control. Moreover, the only difference between the prior art and that of the *claimed* invention is how the control is labeled. Therefore, this non-functional descriptive material will not distinguish the claim from the prior art.

37. In response to Applicants' argument (6), As noted in the rejection of claim 43, the Examiner has provided an example of a prior art reference (Schwartz) in support of the Official Notice in response to Applicants' traversal.

Conclusion

38. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

39. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3626


however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke Gilligan whose telephone number is (571) 272-6770. The examiner can normally be reached on Monday-Friday 8am-5:30pm.

41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

9/1/07


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